Court No.3

Criminal Misc. Application No. 203 of 2003

Gopal Saran Sharma .....Applicant.

Vs.

Special Magistrate (CBI) Dehradun .....Respondent.

Hon'ble Irshad Hussain, J.

Heard Sri L.K.Tewari, counsel for the applicant and Sri U.K. Uniyal, counsel for the C.B.I.

Criminal miscellaneous application under section 482 of the Code of Criminal Procedure was moves with a prayer to direct the Special Judicial Magistrate C.B.I., Dehradun, Uttaranchal, not to proceed with criminal case No. 1556/2002 C.B.I. versus Gopal Saran Sharma as the said Court has ceased to have jurisdiction in the subject matter of the case after issuance of notification conferring jurisdiction of 18 districts of western Uttar Pradesh including district of Moradabad to special Judicial Magistrate Magistrate, First Class, Moradabad. A notification was issued by the U.P. Government on 28-12-2001 in regard to the 18 districts and in pursuance thereof, the Allahabad High Court was pleased to issue notification dated 16-01-2002 in regard to the appointment of Special Judicial Magistrate, First Class, Ghaziabad for the offence committed in the geographical area mentioned in the said notification.

Copy of the charge sheet filed by the CBI against the applicant indicates that the offence was committed within the jurisdiction of district Ghaziabad (U.P.) which by virtue of the government order dated 28.12.2001 falls within the jurisdiction of Court of Special Judicial Magistrate, First Class, Ghaziabad. By notification of the Allahabad High Court dated 16-01-2002 new Court of Special Judicial Magistrate, First class at Ghaziabad was created pursuant to the aforementioned government notification and above case now falls within the jurisdiction of Special Judicial Magistrate, First Class, Ghaziabad and Special Judicial Magistrate, CBI, Dehradun now has no jurisdiction to proceed with the trial.

Apart from this, the provisions of section 91 of U.P. Reorganization Act, 2000, envisages that the proceedings pending before the appointed day in a court, tribunal, authority or officer in any area which on that day falls within the State shall stand transferred to the corresponding court, tribunal, authority or officer of that State. The provisions of said section 91 are similar to the provisions of section 89 of the Bihar Reorganization Act, 2000. The said provision came into consideration before the Apex Court in the case of ***C.B.I. AH.D. Patna Vs. Braj Bhushan Prasad & Ors, VII (2001) SLT 87*** and on account of the fact that the occurrence took place in the part of State which now falls in Jharkhand State, the cases specified were directed to be transferred to the competent courts in Jharkhand State. The learned counsel for the petitioner contended that he law declared by the Supreme Court is the law of the land and binding on all throughout the country in view of Article 141 of the Constitution and on this analogy the instant case has to be transferred to a court of competent jurisdiction, which in this case is the Court of Special Judicial Magistrate, First Class (CBI) Ghaziabad (U.P.). Having regard to the facts of the case the submission has force and has to be accepted.

Sri U.K. Uniyal has submitted that he has no objection if the case is transferred to the court at Ghaziabad.

The application is allowed. Criminal case No. 1556/2002 C.B.I. Vs. Gopal Saran Sharma pending before Special Magistrate (CBI) Dehradun, Uttaranchal is transferred to the Special Court of Judicial Magistrate First, Class, Ghaziabad.

Dated: 22.9.2003 **(Irshad Hussain, J.)**

ISB